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In the United States Patent and Trademark Office

Appellants:	Clayton Charles Troxell et al.	Docket No.:	18,951
Serial No.:	10/748,649	Group:	1731
Confirmation No.:	6902	Examiner:	M. Halpern
Filed:	December 30, 2003	Date:	July 3, 2008
For:	ROLLED PAPER PRODUCT HAVING HIGH BULK AND SOFTNESS		

Appeal Brief Transmittal Letter

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37, transmitted herewith is an Appeal Brief pursuant to the Notice of Appeal which was mailed on June 17, 2008.

The $510.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2) was paid on February 28, 2008 and charged to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Please re-apply that charge to this Appeal Brief submission and charge any other prosecutional fees which may be due or credit any overpayment to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

CLAYTON CHARLES TROXELL ET AL..

By: _____
Gregory E. Croft
Registration No.: 27,542

CERTIFICATE OF TRANSMISSION

I, Judy Garot, hereby certify that on July 3, 2008 this Appeal Brief Transmittal is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Typed or printed name of person signing this certificate:

Judy Garot

Signature:

Judy Garot

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For: ROLLED PAPER PRODUCT HAVING HIGH BULK AND SOFTNESS

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief following the filing of a Notice of Appeal on June 17, 2008.

A **Final Rejection** of claims 1, 3-17 and 22-28 was mailed on November 14, 2007. On February 6, 2008, Appellants, pursuant to 37 C.F.R. 41.31, mailed a timely Notice of Appeal. Appellants submitted a timely-filed Appeal Brief on February 28, 2008. The Examiner re-opened prosecution with a non-final Office Action mailed May 20, 2008. On June 17, 2008 Appellants submitted a Notice of Appeal on the basis that Appellants' claims have been twice rejected. Thus, the time period for filing this Appeal Brief expires on August 17, 2008.

Real Party in Interest

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of record.

Related Appeals and Interferences

There are no known related appeals and/or interferences.

Status of Claims

Claims 1-17 and 22-28 remain in the application with claims 1, 3-17 and 22-28 being finally rejected. No claims have been allowed or confirmed. Claim 2 has been withdrawn as being directed to a non-elected species, and claims 18-21 have been cancelled. The appealed claims include 1, 3-17 and 22-28 and appear in the CLAIMS APPENDIX of this Brief.

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Status of Amendments

No amendments after the last rejection have been filed.

Summary of Claimed Subject Matter

The invention of independent claim 1 is directed to a product comprising a wound roll of a single-ply tissue web (see specification at page 2, lines 4-5). Prior to winding the tissue web into the roll, a chemical additive is extruded onto at least one surface of the tissue web (see specification at page 1, lines 28-30). The resulting treated tissue web exhibits a Fuzz-On-Edge value of about 1.8 mm/mm or greater (see specification at page 2, lines 9-10). The wound roll exhibits a roll bulk of about 10 cc/g or greater (see specification at page 2, lines 5-6).

Grounds of Rejection To Be Reviewed on Appeal

The first ground of rejection is whether or not claims 1, 3-17 and 22-28 are unpatentable under 35 U.S.C. 102(e) as being anticipated by U.S. 6,887,348 to Hermans et al.

The second ground of rejection is whether or not claims 1, 3-17 and 22-28 are unpatentable under 35 U.S.C. 103(a) as being obvious in view of U.S. 6,887,348 to Hermans et al.

Argument

Rejection of Claims 1, 3-17 and 22-28 under 35 U.S.C. 102(e) as being anticipated by U.S. 6,887,348 to Hermans et al.

Briefly, Appellants' claimed invention pertains to the discovery that using extrusion to apply chemical additives to one or both surfaces of a tissue web in the form of filaments preserves a significant amount of the softness of the tissue web as measured by the Fuzz-On-Edge test. Insofar as surface fuzziness is an important component of tissue softness, retaining as much fuzziness as possible during manufacturing is an important objective. It is believed that the nature of the extruded filament deposits, which inherently are present only in discrete areas of the tissue surface, significantly avoids matting down the fibers of the tissue web. This is to be distinguished from conventional chemical addition methods such as spraying or printng, which substantially cover the entire surface of the web. (See specification at page 13, lines 11-25.)

Turning to the first ground of rejection, claims 1, 3-17 and 22-28 stand rejected under 35 U.S.C. § 102(e) as being anticipated and thus unpatentable over U.S. 6,887,348 to Hermans, which teaches the application of polysiloxane to a web, such as by spraying or printing. It is asserted that the method of application of the chemical additive (extrusion) does not structurally differentiate the claimed product over Hermans et al. However, Appellants disagree for two reasons.

First, the claimed products recite the presence of "filaments", which clearly is structure and cannot be ignored. Hermans et al. does not disclose the presence of polysiloxane filaments. In this regard it will be appreciated by those of ordinary skill in the tissue making arts that printing or spraying, which are commonly used to apply softening chemicals to tissues, do not produce filaments on the tissue sheet. In particular, printing provides many very small deposits that are more like "dots" than anything else. They certainly are not "filaments". Similarly, spraying produces a mist of fine droplets. Again, spraying does not produce filaments as claimed. On this basis alone, the product of Hermans et al. is clearly different and therefore Hermans et al. does not anticipate Appellants claims.

Furthermore, it is Appellants' position that the fact that the filaments are described as being "extruded" or "melt blown" (claim 28) further defines the structure of the filaments. Claiming products by the method by which they are made is acceptable when the resulting product has a unique structure that cannot be defined by any other way. Those skilled in the art will appreciate that extrusion processes, such as meltblowing processes, inherently produce a certain filament structure due to the viscous nature of the material being extruded. While the extruded or meltblown filament may change shape before it solidifies, there nevertheless is a unique structure remaining on the tissue sheet that is different than deposits that are sprayed or printed onto the surface of the sheet. While one may argue, in some cases, that the shape of the solidified deposit is no longer that of a perfectly-shaped filament, there is no question that the teachings of Hermans et al. do not anticipate the presence of extruded filaments, regardless of their ultimate shape, on the surface of the tissue. For the foregoing reasons, Hermans et al. does not anticipate the subject matter of Appellants' claims.

Further Discussion Regarding Claim 28

As mentioned above, dependent claim 28 specifies that the extruded filaments are "melt blown". Melt blowing is a well known process for producing nonwoven webs and produces a unique filament structure. One of ordinary skill in the art would not equate the deposits produced by melt blowing with those produced by printing or spraying and could readily recognize the differences. Therefore claim 28 is not anticipated by Hermans et al. for this additional reason.

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Rejection of Claims 1, 3-17 and 22-28 under 35 U.S.C. 103(a) as being obvious in view of U.S. 6,887,348 to Hermans et al.

As stated during prosecution in Appellants' Response dated February 23, 2007, the cited Hermans et al. reference was commonly-assigned or under an obligation to assign to Kimberly-Clark at the time the invention of Appellants' application was made. Since Hermans et al. was not issued until after Appellants' filing date, Hermans et al. is not available as a prior art reference under 35 U.S.C. 103(a). Therefore this basis for rejection is not proper.

Conclusion

For the reasons stated above it is Appellants' position that the rejection of claims 1, 3-17 and 22-28 has been shown to be improper and should be **reversed** by the Board.

The $510.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing the Appeal Brief mailed February 6, 2008 has been previously charged to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875 and should be applied to the filing of this Appeal Brief. Any additional prosecutional fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: (920) 721-3616.

Respectfully submitted,

CLAYTON CHARLES TROXELL ET AL.

By: 

Gregory E. Croft
Registration No.: 27,542

CERTIFICATE OF TRANSMISSION

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Typed or printed name of person signing this certificate:

Judy Garot

Signature:

Judy Garot

Claims Appendix

The claims on appeal are:

1. A product comprising:

a single ply web comprising cellulosic fibers having a first and a second opposing sides;

a plurality of extruded filaments of a chemical additive extruded onto the first and/or second opposing side of the web;

the single ply web wound into a roll;

the roll having a roll bulk about 10 cc/g or greater; and

the first and/or second opposing side with the chemical additive filaments having a Fuzz-On-Edge about 1.8 mm/mm or greater.

2. (Withdrawn/Previously Presented) A product comprising:

an uncreped throughdried single ply tissue web comprising cellulosic fibers having a first and a second opposing sides;

a plurality of extruded filaments of a chemical additive extruded onto the first and/or second opposing side of the web;

the tissue web wound into a roll;

the roll having a roll bulk about 10 cc/g or greater; and

the first and/or second opposing side with the chemical additive filaments having a Fuzz-On-Edge about 2.0 mm/mm or greater.

3. The product of claim 1 or 2 wherein the roll bulk is about 11 cc/g or greater.

4. The product of claim 1 or 2 wherein the roll bulk is between about 10 cc/g to about 16 cc/g.

5. The product of claim 1 or 2 wherein the roll bulk is between about 11 cc/g to about 16 cc/g.

6. The product of claim 1 or 2 wherein the Fuzz-On Edge is about 2.4 mm/mm or greater.

7. The product of claim 1 or 2 wherein the Fuzz-On Edge is about 2.8 mm/mm or greater.

8. The product of claim 1 or 2 wherein the Fuzz-On Edge is between about 2.0 mm/mm to about 3.0 mm/mm.

9. The product of claim 1 or 2 wherein the web comprises a bath tissue web.

10. The product of claim 1 or 2 wherein the extruded filaments of the chemical additive are extruded onto both the first and the second opposing sides.

11. The product of claim 5 wherein the Fuzz-On Edge is between about 2.0 mm/mm to about 3.0 mm/mm.

12. The product of claim 5 wherein the Fuzz-On Edge is between about 2.2 mm/mm to about 2.9 mm/mm.

13. The product of claim 1 or 2 wherein the chemical additive comprises polysiloxane.

14. The product of claim 1 or 2 wherein the Kershaw firmness is between about 12 mm to about 0 mm.

15. The product of claim 1 or 2 wherein the CD Kawabata Bending Stiffness is about 0.06 or less.

16. The product of claim 11 wherein the CD Kawabata Bending Stiffness is about 0.04 or less.

17. The product of claim 1, 2, 5, 10, 11, 13, 14, 15, or 16 wherein the first or second opposing side with the applied chemical contains a plurality of fuzzy fibers generated by a shear calendering device.

22. The product of claim 1 or 2 wherein the chemical additive has a viscosity of between about 1,500 cps to about 10,000 cps.

23. The product of claim 1 or 2 wherein the extruded filaments form a network.

24. The product of claim 1 or 2 wherein the chemical additive has a viscosity of between about 1,000 cps to about 50,000 cps.

25. The product of claim 1 or 2 wherein the extruded filaments of the chemical additive are extruded onto only one opposing side of the web.

Evidence Appendix

No evidence is submitted with this Appeal Brief.

Related Proceedings Appendix

There are no known related proceedings.